

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SCOTT RAMEY,

Civil No. 11-2310 (JRT/TNL)

Petitioner,

REPORT AND RECOMMENDATION

v.

SANDRA TISCHLER,

Respondent.

This matter is before the undersigned United States Magistrate Judge on Petitioner's application for a writ of habeas corpus. The case has been referred to this Court for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this case be summarily dismissed without prejudice.

Petitioner's habeas corpus petition, (Docket No. 1), was filed on August 11, 2011. Soon thereafter the petition was reviewed by this Court pursuant to Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts. Upon conducting that review, the Court found the petition to be materially defective in several respects. In an order dated September 12, 2011, (Docket No. 7), the Court informed Petitioner about the defects that were found in his petition, and directed him to file an amended petition by no later than October 7, 2011. That order also required Petitioner to file a separate affidavit showing that he was "in custody," as required by 28 U.S.C. § 2254(a) and Maleng v. Cook, 490 U.S. 488, 490-91 (1989) (per curiam).

The Court's prior order expressly informed Petitioner that if he did not file an amended petition and the required affidavit by October 7, 2011, he would be deemed to have abandoned this action, and it would be recommended that the action be dismissed pursuant to Fed. R. Civ. P. 41(b).

The deadline for complying with the Court's prior order expired more than a month ago. Petitioner has neither filed an amended petition or the required affidavit, nor offered any excuse for his failure to do so. Indeed, Petitioner has not communicated with the Court at all since shortly after he commenced this action. Therefore, it is now recommended, in accordance with the Court's prior order, that Petitioner be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, 267 Fed. Appx. 496, 497 (8th Cir. 2008) (unpublished opinion) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order."); Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing federal court's inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

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Based upon the above, and upon all the records and proceedings herein, **IT IS HEREBY RECOMMENDED** that his action be summarily **DISMISSED WITHOUT PREJUDICE**.

Dated: November 22, 2011

s/ Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
for the District of Minnesota

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Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court and by serving upon all parties written objections that specifically identify the portions of the Report to which objections are made and the basis of each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before **December 9, 2011**.